

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ALESHA T. FULLER,

Plaintiff,

v.

3:18-CV-0902
(GTS/DEP)

JOHNSON CITY POLICE DEPARTMENT; and
PATROLMAN JUSTIN DAVY,

Defendants.

APPEARANCES:

ALESHA T. FULLER
Plaintiff, *Pro Se*
256-½ Main Street
Binghamton, New York 13905

GLENN T. SUDDABY, Chief United States District Judge

DECISION and ORDER

Currently before the Court, in this *pro se* civil rights action filed by Alesha T. Fuller Pendell (“Plaintiff”) against the Johnson City Police Department and Patrolman Justin Davy (“Defendants”) arising from an allegedly unlawful stop and search is United States Magistrate Judge David E. Peebles’ Report-Recommendation recommending that (1) Plaintiff’s claims against Defendant Davy be permitted to proceed at this time, (2) Johnson City be substituted as a Defendant in the place of the Johnson City Police Department, (3) Plaintiff’s claims against Defendant Johnson City be *sua sponte* dismissed for failure to state a claim, and (4) Plaintiff be granted leave to amend her claims against Defendant Johnson City. (Dkt. No. 4.) Plaintiff has not filed an objection to the Report-Recommendation, and the deadline by which to do so has expired. (*See generally* Docket Sheet.)

After carefully reviewing the relevant papers herein, including Magistrate Judge Peebles' thorough Report-Recommendation, the Court can find no clear-error in the Report-Recommendation.¹ Magistrate Judge Peebles employed the proper standards, accurately recited the facts, and reasonably applied the law to those facts. As a result, the Report-Recommendation is accepted and adopted in its entirety for the reasons set forth therein.

ACCORDINGLY, it is

ORDERED that Magistrate Judge Peebles' Report-Recommendation (Dkt. No. 4) is **ACCEPTED** and **ADOPTED** in its entirety; and it is further

ORDERED that Plaintiff's claims against Defendant Justin Davy **SURVIVE** the Court's *sua sponte* review of her Complaint; and it is further

ORDERED that Johnson City is **SUBSTITUTED** as a Defendant in the place of the Johnson City Police Department, and the Clerk of the Court shall **AMEND** the caption of the docket sheet in this action accordingly; and it is further

ORDERED that Plaintiff's claims against Defendant Johnson City are **DISMISSED** **without prejudice** to refiling in this action; and it is further

ORDERED that Plaintiff is granted leave to amend her claims against Defendant Johnson City (to correct the pleading defects identified in the Report-Recommendation) without

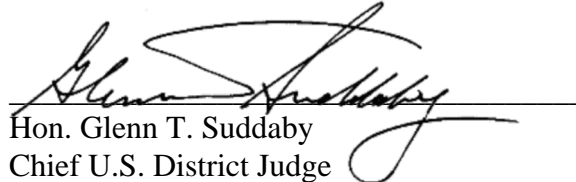
¹ When no objection is made to a report-recommendation, the Court subjects that report-recommendation to only a clear error review. Fed. R. Civ. P. 72(b), Advisory Committee Notes: 1983 Addition. When performing such a "clear error" review, "the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." *Id.*; see also *Batista v. Walker*, 94-CV-2826, 1995 WL 453299, at *1 (S.D.N.Y. July 31, 1995) (Sotomayor, J.) ("I am permitted to adopt those sections of [a magistrate judge's] report to which no specific objection is made, so long as those sections are not facially erroneous.") (internal quotation marks omitted).

further Order of this Court within **FORTY-FIVE (45) DAYS** of the date of this Decision and Order;² and it is further

ORDERED the Clerk of the Court shall issue a Summons directed to Defendant Davy and forward it, along with a copy of the Complaint and General Order No. 25, to the U.S. Marshals Service for service upon Defendant Davy, who shall respond in accordance with the Federal Rules of Civil Procedure; and it is further

ORDERED that, in the event that Plaintiff files an Amended Complaint within the above-referenced forty-five day time period, it shall be referred to Magistrate Judge Peebles for his review. If she decides to file such an Amended Complaint, Plaintiff is respectfully reminded to comply with the advice and directives contained on pages 9 and 10 of Magistrate Judge Peebles' Report-Recommendation.

Dated: October 22, 2018
Syracuse, New York


Hon. Glenn T. Suddaby
Chief U.S. District Judge

² After the expiration of the above-mentioned period, Plaintiff may amend her claims only in accordance with Fed. R. Civ. P. 15 and Local Rule 7.1(a)(1),(2),(4).